

# In the Supreme Court of the State of Alaska

**Smallwood Creek, Inc.,**  
Appellant,

v.

**Build Alaska General Contracting,  
LLC, Lexon Insurance Company, and  
Western National Mutual Insurance  
Company,**  
Appellees.

Supreme Court No. S-17774

## **Order Returning Appellant's Brief Amended**

Date of Order: **10/28/2020**

Trial Court Case No. **4FA-19-02428CI**

Appellant's brief and excerpt of record, filed on 10/27/2020, are returned for correction, based on the following reasons specified by the law clerk who reviewed the brief and excerpt for technical compliance with Appellate Rules 210 and 212.

The brief must contain authorities principally relied on, AR212(c)(1)(C).

In the statement of the case, every factual assertion should be supported by a citation to the excerpt or record, AR212(c)(1)(G). Various statements lack citations to the excerpt or record, e.g.:

1. Smallwood moved for leave, BAGC opposed. Pg 3
2. Both parties' requests for oral argument were denied. Pg 3
3. BAGC did not oppose Smallwood moving for release of funds, and court did not rule on it. Pg 3
4. BAGC moved for costs and fees, Smallwood opposed, motion was granted. Pg 4
5. There were no hearings in this case. Pg 4
6. BAGC was awarded a road construction contract by DNR. Pg 5
7. Following Smallwood's final delivery, BAGC questioned the quantities delivered. Pg 6
8. Smallwood delivered to BAGC the number of truckloads it asked for. Pg 7

In the argument section, every factual assertion must be supported by a citation to the excerpt or record, AR212(c)(1)(I). The argument section has factual assertions and legal conclusions that lack citation to the record, e.g.:

1. The court's ruling of the check as an accord and satisfaction. Pg 9
2. This requires a good faith dispute. Pg 9
3. BAGC unilaterally changed the payment measure. Pg 9
4. BAGC unilaterally changed the volume measurement. Pg 9-10
5. This was contrary to the subcontract term. Pg 10
6. BAGC could not have had a good faith belief because there is no such term. Pgs 10-11
7. The State's interest in measuring and paying for surveyed. . . Pg 12
8. Smallwood had no interest in what BAGC did with material it supplied. Pg 12
9. Truck quantities is indicated by pre-contract correspondence . . . Pg13
10. How can there be . . . when similar statements appear on BAGC's previous checks? Pg 16
11. Selling equipment needed to stay in business would put the company out of business. Pg 17
12. Smallwood said without BAGC's check, it would have to sell equipment needed to operate and support his family. Pg 18
13. After Smallwood spent considerable time . . . Pg 20
14. Accord and satisfaction cases require the language . . . Pg 21
15. To this time, the parties' agreement was that BAGC . . . Pg 25

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The original and one copy of the corrected brief, and the excerpt, with proof of service, are due on or before **11/10/2020**.

The appellees' brief due date is **VACATED**. A new due date will be set when the appellant's corrected brief is accepted.

Entered under Appellate Rule 102(f).

Clerk of the Appellate Courts

A handwritten signature in black ink that reads "Beth A. Pechota". The signature is written in a cursive style with a horizontal line underneath the name.

Beth A. Pechota, Deputy Clerk

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